

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA,                    ) 3:12-cv-02265-SI  
  )  
                  Plaintiff,                    )  
  )  
                                  v.                ) March 5, 2013  
  )  
THE CITY OF PORTLAND,                    )  
  )  
                  Defendant.                    )  
\_\_\_\_\_) Portland, Oregon

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL H. SIMON  
UNITED STATES DISTRICT COURT JUDGE

## 1 APPEARANCES

## 2 FOR THE PLAINTIFF:

3 Billy Williams  
4 Adrian Brown  
5 United States Attorney's Office  
6 1000 SW Third Avenue, Suite 600  
7 Portland, OR 97204

8 Michelle Jones  
9 R. Jonas Alexander Geissler  
10 U.S. Department of Justice Civil Rights Division  
11 950 Pennsylvania Avenue, NW  
12 Washington, DC 20530

## 13 FOR THE DEFENDANT CITY OF PORTLAND:

14 Ellen C. Osoinach  
15 City of Portland  
16 Office of the City Attorney  
17 1221 SW 4th Avenue, Suite 430  
18 Portland, OR 97204

## 19 FOR THE DEFENDANT PORTLAND POLICE ASSOCIATION:

20 Anil Karia  
21 Tedesco Law Group  
22 3021 NE Broadway  
23 Portland, OR 97232

## 24 FOR ENHANCED AMICUS CURIAE:

25 Shauna M. Curphey  
Curphey & Badger, P.A.  
520 SW Sixth Avenue, Suite 1040  
Portland, OR 97204

Jessica Ashlee Albies  
Creighton & Rose, PC  
815 SW Second Avenue, Suite 500  
Portland, OR 97204

26 COURT REPORTER: Dennis W. Apodaca, RDR, RMR, FCRR, CRR  
27 United States District Courthouse  
28 1000 SW Third Avenue, Room 301  
29 Portland, OR 97204

(March 5, 2013)

P R O C E E D I N G S

(Open court:)

THE COURT: Good afternoon.

COUNSEL: Good afternoon.

THE CLERK: Your Honor, this is the time set for a status in civil case 12-2265-SI, USA versus City of Portland. For the record, we have, for the Government, Jonas Geissler and Michelle Jones by phone. Counsel, in court, would you please identify yourselves for the record.

MR. WILLIAMS: Bill Williams on behalf the United States.

MS. BROWN: Good morning, Your Honor. Adrian Brown on behalf of the United States.

MS. ALBIES: Good morning. Ashlee Albies on behalf of enhanced amicus Albina Ministerial Alliance Coalition.

MS. CURPHEY: Shauna Curphey for Albina Ministerial Alliance Coalition.

MR. KARIA: Anil Karia for Portland Police Association.

MS. OSOINACH: Ellen Osoinach on behalf of the City.

THE COURT: Very good. Welcome. I scheduled

1 this primarily to hear a status report on where things  
2 stand primarily with respect to my encouragement of the  
3 parties to engage in mediation. So let me begin by asking  
4 counsel for plaintiff, either Mr. Williams or Ms. Brown.

5 MS. BROWN: Thank you, Your Honor. The  
6 United States has conferred with all the parties, and we  
7 have reached an agreement on mediation. The United States  
8 and all of the parties actually concur in recommending  
9 that Judge De Muniz be appointed as our mediator. We have  
10 conferred. Also, the parties got to meet with  
11 Judge De Muniz, and he agreed to take on this assignment,  
12 with the Court's approval, and the parties have actually  
13 agreed on the terms of that mediation as well.

14 We would like the Court to acknowledge that and  
15 accept our recommendation of Judge De Muniz and request  
16 the Court to enter a minute order to that effect and allow  
17 the parties to proceed with the terms of the mediation as  
18 we proposed.

19 THE COURT: Very good.

20 Anything further from the City?

21 MS. OSOINACH: No. The United States has  
22 accurately summarized.

23 THE COURT: Anything from Portland Police  
24 Association?

25 MR. KARIA: No, sir.

1 THE COURT: Anything from Albina Ministerial  
2 Alliance Coalition for Justice and Police Reform?

3 MS. ALBIES: No, Your Honor.

4 THE COURT: All right. Let me state that I  
5 think the agreement of the parties' selection of former  
6 Chief Justice Paul De Muniz is an outstanding idea. I  
7 think that his abilities, his knowledge, his reputation,  
8 his integrity, his expertise are all superb. I commend  
9 all four parties for both coming with that idea and  
10 reaching agreement on the selection of  
11 Chief Justice De Muniz.

12 I also have been handed a copy, shortly before  
13 taking the bench, of what I understand is the draft or  
14 proposed mediation agreement. I have read it. It looks  
15 excellent to me. I have no suggested changes to it  
16 whatsoever. So I will enter the minute order, Ms. Brown,  
17 that you have suggested immediately after this hearing.

18 I do want to talk briefly with you about an  
19 appropriate schedule and get your opinions on that and  
20 also share with you the following views that are entirely  
21 consistent with the opinion and order that I issued on  
22 February 19th. That's Docket 32.

23 Just so there is no misunderstanding, I wanted  
24 to share with you some key interpretations of that and  
25 give anyone an opportunity who wished to ask for further

1 clarification if you thought clarification would be  
2 necessary.

3 I am going to speak primarily to the issues  
4 raised in the collective bargaining agreement between the  
5 Portland Police Association and the City of Portland. As  
6 I have discussed, I think extensively in that opinion and  
7 order, one of the threshold legal questions for me that  
8 this case has presented to me, without any amendments to  
9 the proposed settlement agreement, is I need to decide  
10 whether or not the proposed settlement agreement, if  
11 adopted, as currently proposed, would modify any rights  
12 that already exist between the City of Portland and the  
13 Portland Police Association under the collective  
14 bargaining agreement, because if it would, then we need to  
15 address whether or not I have the legal authority to do  
16 that by means of approving a settlement agreement.

17 As I articulated in my previous opinion, I'm  
18 skeptical that I can effect a change in the Portland  
19 Police Association's rights, as set forth in the  
20 collective bargaining agreement, merely by approving a  
21 settlement agreement entered into by the United States and  
22 the City of Portland. I believe there is both  
23 United States Supreme Court precedent and Ninth Circuit  
24 precedent that call that into doubt, at least. I'm not  
25 making a final decision. But if that is a realistic

1 possibility, that there may be such a conflict, we will  
2 need to brief it further, and I will need to make some  
3 decisions on that.

4           However, that only applies to the settlement  
5 phase that we're talking about here. If it turns out to  
6 be that the proposed settlement agreement would abrogate  
7 rights under the collective bargaining agreement, and if  
8 it turns out that I'm not allowed to do that by approval  
9 of a settlement agreement, then it seems that where we  
10 would go from there is we would need an adjudication on  
11 the merits. Whether that would be by a trial, in which  
12 case the plaintiff presents its evidence, either the  
13 defendant or the defendant-intervenor presents defenses,  
14 and then the Court enters an adjudication on the merits,  
15 or perhaps even by summary judgment. Perhaps there might  
16 be certain areas that there is no disputes of fact on, and  
17 that would permit the Court to enter an adjudication on  
18 the merits.

19           But from what I have seen, and, again, I'm not  
20 making final decisions here, but I want to share with you  
21 my thoughts. If there is no settlement, and if a  
22 settlement were not approved, but, instead, we were to go  
23 to an adjudication on the merits, whether by trial or by  
24 summary judgment, then from what I've read so far, the  
25 Court has the full authority to enter whatever equitable

1 relief the Court finds appropriate and lawful and just,  
2 even if that relief would impose certain burdens either on  
3 the City or on the members of the Portland Police Bureau,  
4 the members of the Portland Police Association, and even  
5 if those burdens were in violation of the collective  
6 bargaining agreement.

7 In other words, I think I do have the authority  
8 to modify and abrogate the collective bargaining  
9 agreement, but only if done after an adjudication on the  
10 merits, but I think not as part of a settlement process.

11 That's how I currently am viewing things. To  
12 whatever extent a party thinks I may be inaccurate,  
13 incorrect, if and when we need to get there, I will give  
14 everyone full and fair opportunity for briefing on that  
15 question, and then I will reach some final decisions, but  
16 I wanted to share with everyone that is my thinking and  
17 analysis at this stage.

18 Let me ask, does anyone have any questions about  
19 that or seek any clarification? I am going to go in the  
20 same order we have been receiving. I will start with the  
21 United States.

22 MS. BROWN: No, Your Honor. It is very clear.  
23 Thank you.

24 THE COURT: The City?

25 MS. OSOINACH: No, Your Honor.



1 THE COURT: Portland Police Association.

2 MR. KARIA: No, sir. It's very clear. Thank  
3 you.

4 THE COURT: Albina Coalition?

5 MS. ALBIES: No, Your Honor. Thank you.

6 THE COURT: Now, my last order, when I  
7 recommended a period of 45 days for mediation, that was  
8 really just a suggestion. As part of that, I asked the  
9 parties to let me know by a joint status report not later  
10 than April 8th, 2013 where things stood, and then we could  
11 decide where to go after that.

12 Does that still look like a reasonable time  
13 frame for everyone?

14 United States?

15 MS. BROWN: Yes, Your Honor. At this point in  
16 time, that appears reasonable. We are hoping that with  
17 our contracting requirements that we are able to get  
18 started on mediation with Judge De Muniz by early next  
19 week. Then depending on the schedules of the parties, we  
20 just would like some flexibility in determining, as the  
21 mediation proceeds and scheduling issues and meetings  
22 amongst separate groups or, as a whole, that we are able  
23 to come back to the Court and let the Court know how  
24 things are going, even maybe before April 8, to determine  
25 whether or not we may need additional time.

1 THE COURT: Does anyone else wish to be heard on  
2 that point?

3 MR. KARIA: No, sir.

4 THE COURT: That sounds fine with me. Why don't  
5 we plan on this, then: Feel free to send in a joint  
6 status report whenever you all agree would be appropriate,  
7 but in no event later than April 8th, 2013, unless you all  
8 agree to ask for a modest extension of that date, in which  
9 case I will be inclined to grant it.

10 Feel free to let me know how things are going,  
11 whenever you think is the right time to let me know how  
12 things are going. Then depending upon how things go, we  
13 will talk about where we go from here.

14 All right. Is there anything else that anyone  
15 wishes to raise or discuss during this status conference?

16 First, the United States?

17 MS. BROWN: I don't think so, Your Honor. Thank  
18 you.

19 THE COURT: The City?

20 MS. OSOINACH: Just to clarify, if, during the  
21 course of our mediation, some of the parties feel that we  
22 need more time and others don't, and somebody objects, how  
23 would you like us to handle that prior to April 8th?

24 THE COURT: In the first instance through your  
25 mediator, Chief Justice De Muniz. Ask him about his views

1 on this. But if you do reach a final impasse on  
2 something, although I prefer to receive a joint status  
3 report from all four parties, if anyone needs the  
4 assistance from the Court on anything, I will make myself  
5 available for any party in this matter. By "party," I  
6 mean all four of you. I am referring to the Albina  
7 Coalition as a party, as I indicated in my order. If  
8 anyone needs assistance from the Court, I will make this a  
9 priority, and I will give it very prompt attention.

10 Let me know if you need something from me. In  
11 the meantime, I think you should work through any issues  
12 as best you can with your mediator, Chief Justice  
13 De Muniz.

14 MS. OSOINACH: Thank you.

15 THE COURT: Anything from anyone else?

16 I commend the parties on an excellent choice of  
17 mediator, what I understand is an agreed-upon mediation  
18 agreement. I think this is showing a very good -- it is  
19 not a beginning, because you have done so much work on  
20 this case before it ever arrived at my desk. I recognize  
21 that. But since this case has been filed in court, I  
22 think that it is now going in a very positive direction.  
23 I encourage the parties to keep it up.

24 I think we all recognize that this is a very,  
25 very important issue to the City, to the region, to the

1 country, and I commend all parties for what they have done  
2 so far.

3 Good luck.

4 COUNSEL: Thank you, Your Honor.

5 (Court adjourned.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca  
DENNIS W. APODACA, RDR, RMR, FCRR, CRR  
Official Court Reporter

December 30, 2014  
DATE